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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

ALITALIA-LINEE AEREE ITALIANE, S.p.A.,

Petitioner,

—v.—

JOHN LISI, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MOTION OF THE REPUBLIC OF ITALY FOR LEAVE TO FILE A BRIEF AS *AMICUS CURIAE* AND ACCOMPANYING BRIEF

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MOTION OF THE REPUBLIC OF ITALY FOR LEAVE TO FILE A BRIEF AS *AMICUS CURIAE*

The Republic of Italy moves this Honorable Court for leave to file the attached brief as *amicus curiae* in support of the Petitioner Alitalia-Linee Aeree Italiane, S.p.A.

Counsel for the petitioner have consented to the filing of this brief, but counsel for respondent has refused consent. Accordingly, this motion is brought pursuant to Rule 42.

The Republic of Italy is a High Contracting Party to the Convention for the Unification of Certain Rules Relating to International Transportation by Air, concluded at Warsaw, October 12, 1929 (commonly referred to as the Warsaw Convention).[1] Representatives of the Government

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[1] 49 Stat. 3000, *et seq.*; T.S. 876.

of Italy participated in the drafting of this Treaty, and Italy was one of the original signatories to the Treaty. The Republic of Italy has been a party to this Treaty together with the United States continually since the Treaty came into force as to the United States on October 29, 1934.

The decision of the United States Court of Appeals for the Second Circuit is inconsistent with the mutual commitments assumed by the Governments of Italy and the United States as expressed in the Treaty. This case presents questions regarding the meaning of the Treaty as evinced by its plain language and by the record of the deliberations of the delegates who drafted the Treaty.

As one of the twenty-three original signatories, and an active participant in the drafting of the Treaty, the Republic of Italy wishes an opportunity to place before the Supreme Court of the United States its understanding of the commitments assumed by the parties to the Treaty as appears from the language thereof, and as revealed by the minutes of the Warsaw Conference.

It is requested, therefore, that the views of the Republic of Italy as expressed in the attached brief *amicus curiae*, be considered by this Court in resolving the question presented by the Petitioner.

Respectfully submitted,

ALFRED C. CLAPP
Counsel for the Republic of Italy

CLAPP & EISENBERG
Of Counsel

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BRIEF OF THE REPUBLIC OF ITALY AS *AMICUS CURIAE* IN SUPPORT OF THE PETITIONER

The Republic of Italy respectfully submits this Brief as *amicus curiae* in support of petitioner Alitalia-Linee Aeree Italiane, S.p.A. The Republic of Italy was one of the original signatories to the Warsaw Convention of 1929 and actively participated in the Conference which drafted the Treaty. In the opinion of the Republic of Italy the Court of Appeals of the United States has achieved a result in direct conflict with the intent of the High Contracting Parties to the Warsaw Convention.

I.

The Court of Appeals held that the liability limitation (for personal injury or death) specified in the Treaty does

not apply when, although a passenger ticket was delivered, the ticket failed, in the Court's opinion, to give notice of the limitation. The parties to the Treaty expressly limited the imposition of the sanction of unlimited liability to cases where no passenger ticket was delivered.[1] The extension of this sanction to cases in which the passenger ticket was delivered without a statement that the transportation is subject to the liability rules of the Convention, was expressly considered and unequivocally rejected by the drafters of the Treaty.[2]

The failure of the parties to impose the sanction of unlimited liability for omission of particulars on a passenger ticket was neither insignificant nor unintentional. These articles were drafted with deliberate care as appears from the following comment by the delegate from the Republic of Italy:

> *"Mr. Giannini—President of the Committee—As I cautioned you, as we go along, we will examine each article, eliminate the little mistakes, which could creep in. We have tried to make a uniform language, but if we have overlooked something, I will be forced to point it out. Of course, the formula must be the same everywhere."*[3]

When the United States adhered to the Warsaw Convention in 1934, it did so with full knowledge of the intent of the original signatories, as plainly revealed on the face of the Treaty. If any doubt existed, the minutes of the Warsaw Conference of 1929 evincing the intent of the

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[1] 49 Stat. 3015.

[2] IIème Conférence Internationale de Droit Privé Aérien, ICAO Doc. 7838, pp. 100-101, 129, 168 (1930).

[3] IIème Conférence Internationale de Droit Privé Aérien, ICAO Doc. 7838, p. 129 (1930).

drafters and original signatories was available. When the Republic of Italy subscribed to the Warsaw Convention, it felt assured that, since this was a multilateral Treaty and, as such, the product of the interests and concerns of many countries, its plain meaning would not be disregarded by courts of the participating countries.

II.

The crucial issue in this case is the vitality of international conventions, in general, and the Warsaw Convention in particular. Article 41 of the Treaty expressly provides the means—and the only means—for changing the Treaty:

> *"Any High Contracting Party shall be entitled not earlier than two years after the coming into force of this Convention to call for the assembling of a new international Conference in order to consider any improvements which may be made in this Convention. To this end he will communicate with the Government of the French Republic which will take the necessary measures to make preparations for such Conference."* [4]

In addition, if one of the participating parties to the Treaty no longer wishes to abide by it, Article 39 provides:

> *"1) Any one of the High Contracting Parties may denounce this Convention by a notification addressed to the Government of the Republic of Poland, which will at once inform the Government of each of the High Contracting Parties.*
>
> *2) Denunciation shall take effect six months after the notification of denunciation, and shall operate only*

[4] 49 Stat. 3023.

as regards the Party who shall have proceeded to denunciation."[5]

No principle of international law can support the proposition that a national court of one party to a Treaty can negate or amend any of the terms of the Treaty except in accordance with the procedures established by the Convention and general concepts of international law.

III.

The decision of the United States Court of Appeals is completely at variance with the understanding of the Republic of Italy as to the commitments of the United States as expressed in the Treaty. The decision is also at variance with the understanding of the United States as to its commitment as expressed in the Treaty. In 1955 the Government of the United States openly took the position that an amendment of the Treaty would be required to extend the sanction of unlimited liability to cases in which the passenger ticket fails to notify the passenger of the applicability of the liability rules of the Convention. The Republic of Italy supported the United States when it urged the amendment of Article 3 of the Warsaw Convention to require notice in the passenger ticket of the limitation of liability. This amendment was adopted at the Hague Conference of 1955.[6] For reasons of its own, the United States chose not to ratify the Hague Protocol. S. Exec. Doc. H, 86th Cong. 1st Sess. (1959); S. Exec. Rept. No. 3, 89th Cong. 1st Sess. (1965).

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[5] 49 Stat. 3022.

[6] International Conference on Private Air Law, ICAO Doc. 7686—LC/140 pp. 3, 13 (1955).

CONCLUSION

It is respectfully submitted that this Court should not permit a Treaty between the United States, Italy, and 91 other countries,[7] to be interpreted in a manner inconsistent with the intent of the parties to the Treaty, as clearly expressed in the language employed and as demonstrated by the history of the Treaty. It is, therefore, urged that the decision of the United States Court of Appeals should be reversed.

Respectfully submitted,

ALFRED C. CLAPP
Counsel for the Republic of Italy

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Of Counsel

[7] Treaties in Force, Department of State Publication 8188, p. 235 (1967).

Certificate of Service

I hereby certify that I have this 21st day of December, 1967, served the foregoing Motion and Brief upon petitioner, respondents, the International Air Transport Association, the Air Transport Association of America, the United States, the United Kingdom of Great Britain and Northern Ireland, and Arnold Holtzman, *amici curiae*, by depositing same in the United States mailbox at 744 Broad St., Newark, N.J., with first class postage prepaid addressed to the respective attorneys of record as follows:

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